RACIAL DISTINCTIONS IN SOUTHERN LAW

GILBERT THOMAS STEPHENSON

The suffrage clauses recently adopted by six of the Southern States, beginning with Mississippi in 1890 and ending with Virginia in 1902, have disqualified for the elective franchise a majority of the negroes of voting age without appreciably diminishing the possible number of white voters. In other words, there have been racial distinctions in the matter of suffrage without their being so defined in the letter of the law. Now, the question is: Are these suffrage distinctions the only racial distinctions found in the Southern law, either expressed or implied, or are they only members of a group of such distinctions which have been evolving since the negro has been a free man? In this paper it shall be my aim to show briefly that the latter is the case, that there are other racial distinctions recognized in the Southern law, that some of the distinctions once present in Southern codes and constitutions have since been dropped, and that others have been introduced from time to time. And by making the suffrage distinctions only links of a chain, I hope that we shall arrive at some conclusion as to the trend of Southern legislation with regard to the negro.

The general subject of racial distinctions is practically limitless in extent. Many of these distinctions are as intangible as race prejudice itself and take various methods of expression. Instead, therefore, of undertaking a general discussion of this inexhaustible subject, I shall narrow it to more manageable proportions by treating only one of its many phases.

Racial distinctions are of two classes—customary and legal. The former have been developing ever since the first slave-ship landed on the coast of Virginia in 1619, and, like all customs, do not admit of satisfactory treatment within the metes and bounds of brief discussion. The legal distinctions are more definite, and will bear subdivision. There are (1) what we may call the common law distinctions, and (2) the constitutional and statutory distinctions. By the former, I mean racial distinctions that actually exist in the court-room. Do the negro and the white man stand on an equal footing before the law? Is the negro who commits a petty theft punished equally with the white man who is guilty of the same offense? Is the negro who commits murder upon a white man given the same sentence as the white man who kills a negro under the same circumstances and with similar provocation? Does the testimony of a negro weigh as heavily with the court as that of a white man? Interesting as these questions are, they must be excluded from this discussion. Thus we are left with only those racial distinctions which exist at present, or have existed, in the letter of the law of the Southern States.

And by Southern States I mean all those which had not emancipated their slaves prior to Lincoln's Proclamation. These, of course, include all the States of the Southern Confederacy, and besides, Missouri, Kentucky, and Maryland. There are or have been, no doubt, racial distinction in the laws of other States, but we must pass them by for the present.

In point of time we shall not consider the numerous distinctions which existed while the negro was still a slave, but shall take them from the date of his emancipation, when he was supposedly put upon a legal equality with the white man, and trace them to the present day.

When, in 1865, the Southern States found their slaves turned into freedmen, they could not conceive of negroes being or becoming an integral part of the body politic, but rather thought that particular arrangements for them should be made. Accordingly, three of the States—Georgia,[1] Mississippi,[2] and Texas[3]—made provisions in their constitutions for special legislation with regard to the negro.

Among the first questions to arise was as to who should be included in the application of this special legislation. For the emancipated slaves were, racially considered, a heterogeneous lot, varying from the brightest mulatto, as white as a Caucasian, to the full-blooded African, as black as "the Ace of Spades;" and surely such extremes could not be included under the general term "negro." Consequently the word "negro" is found very seldom in Southern law; but in its stead the words "person of color" are used. And a "person of color" includes full-blooded negroes, mulattoes, mestizos, and all persons descended from negro ancestors to the third generation, inclusive, although one ancestor in each generation may have been white.[4] Tennessee[5] and Arkansas[6] consider one a person of color who has the slightest visible trace of negro blood; while South Carolina[7] is so lenient as to consider a person white who has only one-eighth of negro blood.

[1]Constitution, 1865, Art. II, sec. 5.

[2]Constitution, 1865, Art. VIII.

[3]Constitution, 1866, Art. VIII.

[4]Code of Alabama, 1896, sec. 2, p.112; Statutes of Arkansas, 1894, sec. 6229, p. 1375; Laws of Florida, 1865, p. 30; Laws of Georgia, 1865–66, p. 239; Laws of Missouri, 1864, p. 67; Laws of South Carolina, 1865, p. 271; Laws of Tennessee, 1865–66, p. 65; Laws of Texas, 1884, p. 40.

[5]Laws of Tennessee, 1865–66, p. 65.

[6]Statutes of Arkansas, 1894, p. 1375.

[7]Laws of South Carolina, 1865, p. 271.

Moreover, it was necessary to fix the marital relations of these persons of color, which had been very irregular during slavery. Most of the States simply passed acts legalizing all slavery marriages.[1] Kentucky[2] and Maryland,[3] however, required negroes who had been married under the slave code to file a statement of such marriage with the Clerk of the County Court and obtain a certificate; while Florida[4] and Missouri[5] required all negroes claiming to be husband and wife to be remarried before a certain date. The laws which fixed the marital relations of negroes also legitimatized their children and made them legal heirs of the property of their parents.

The status of negro laborers was not as easily determined as the family relations. A number of the States made special provisions for negro apprentices. Mississippi[6] and South Carolina[7] went farthest in this sort of legislation, though Kentucky[8] and North Carolina[9] followed in their wake. In South Carolina and Mississippi the parents of colored children might apprentice them to suitable masters—boys until they were twenty-one; girls until they reached eighteen. If the parents were dead or were paupers or were not bringing up their children in the habits of honesty and thrift and good moral conduct, the magistrate or some other county official was directed to proceed to apprentice such children, preference

[1]Laws of Alabama, 1899, p. 135; Laws of Florida, 1866, p. 22; Laws of Georgia, 1866, p. 156; Laws of South Carolina, 1865, p. 291; Laws of Tennessee, 1865–66, p. 65; Laws of Virginia, 1865, p. 85.

[2]Laws of Kentucky, 1865–66, p. 37.

[3]Laws of Maryland 1867, p. 858.

[4]Laws of Florida, 1865, p. 31.

[5]Laws of Missouri, 1864, p. 68.

[6]Laws of Mississippi, 1865, pp. 86–90.

[7]Laws of South Carolina, 1865, pp. 292–295.

[8]Laws of Kentucky, 1865, pp. 49–50.

[9]Laws of North Carolina, 1874–75, p. 92.

usually being given to former masters. The master had full right over his apprentice, the same as a parent over his child or a guardian over his ward. He might inflict humane corporal punishment; he might recapture him if he ran away. The master obligated himself to teach his apprentice a trade, usually husbandry, and to teach him to read and to write; and at the end of his apprenticeship, to pay him a sum of money—not over sixty dollars in South Carolina.

In nearly all of the Southern States all labor contracts for more than one or two months between white persons and negroes had to be in writing, read to the negro, attested by two credible white witnesses, and approved by the magistrate or other county officials.[1] As in the case of apprenticing, South Carolina went farthest in her requirements of colored contract laborers. The colored laborer was to be known as "servant" and his white employer as "master." His duties were enumerated in the minutest detail. For instance, "On farms and in outdoor service, the hours of labor except on Sunday, shall be from sunrise to sunset, with a reasonable interval for breakfast and dinner. Servants shall rise at the dawn in the morning, feed, water and care for the animals on the farm, do the usual and needful work about the premises, prepare their meals for the day, if required by the master, and begin farm or other work by sunrise. The servant shall be careful of all the animals and property of his master, and especially of all animals and implements used by him, shall protect the same from injury by other persons, and shall be answerable for all property lost,

[1]Laws of Florida, 1865, pp. 32–33; Laws of Kentucky, 1866, p. 52; Laws of Mississippi, 1865, pp. 83–84; Laws of South Carolina, 1865, pp. 299, *et seq.*; Laws of Virginia, 1865–66, p. 83.

destroyed or injured by his negligence, dishonesty or bad faith. . . . Servants shall be quiet and orderly in their quarters, at their work and on the premises, shall extinguish their lights and fires and retire to rest at reasonable hours." The servants might leave the premises on Sunday, but they had to be back by sunset. But they could never leave without the expressed consent of the master, neither could they have any visitors without his permission.

South Carolina, besides thus minutely regulating the labor of negroes under contract, prohibited them from practising the "art, trade or business of an artisan, mechanic, or shop-keeper," or any other trade or business on their own account without paying an annual license fee to the district judge. And no negro could obtain a license who had not served a term of apprenticeship at the trade. Tennessee[1] also required licenses; and Mississippi required negroes to have written evidence of their home and employment.[2] Mississippi[3] also prohibited the renting or leasing of any land to negroes, except in incorporated towns and cities.

At the end of the war, when the relations between the races were strained, there must have existed in the minds of the white people a dread of personal violence at the hands of negroes, for some of the States forbade negroes having and carrying firearms or dirks or bowie-knives.[4] South Carolina allowed negro farmers to keep a shot-gun or rifle "such as is ordinarily used in hunting, but not a pistol, musket or other firearm or weapon appropriate for

[1]Laws of Tennessee, 1865, p. 23.

[2]Laws of Mississippi, 1866, p. 84.

[3]Laws of Mississippi, 1865, p. 82.

[4]Laws of Florida, 1865, p. 25; Laws of Mississippi, 1865, p. 165; Laws of South Carolina, 1865, p. 275.

purposes of war." Out of this dread grew also the prohibition in Kentucky,[1] Mississippi,[2] and South Carolina,[3] of the sale of liquor to negroes. Strange to say, one of the very first acts passed by the legislature of Alabama in 1865,[4] was one repealing a former act which forbade the selling of liquor to negroes.

In the court-room there were legal distinctions on account of race in that negroes were not allowed to sit on juries.[5] Negroes were allowed to testify only in cases, civil and criminal, in which a negro was a party or would be directly affected by the decision.[6]

Only one State established separate courts for negroes, and that was South Carolina.[7] This court was known as the District Court, and sat monthly and quarterly to hear complaints by and against persons of color. It had exclusive jurisdiction, subject to appeal, in all civil cases where one or both of the parties were persons of color, and all criminal cases wherein the accused was a person of color, and also all cases of misdemeanor affecting the person or property of persons of color. The magistrate could try petty cases involving disputes between master and apprentice, master and servant, and the like. But when a white man was arraigned for the murder of a person of color, the case had to be taken before

[1]Laws of Kentucky, 1865–66, p. 68.

[2]Laws of Mississippi, 1865, p. 165.

[3]Laws of South Carolina, 1865, p. 275.

[4]Laws of Alabama, 1865, p. 55.

[5]Laws of Arkansas, 1866–67, p. 99; Laws of Mississippi, 1866–67, p. 233; Laws of Tennessee, 1865–66, p. 24; Laws of Texas, 1866, p. 131.

[6]Laws of Alabama, 1865–66, p. 98; Laws of Kentucky, 1865–66, p. 389; Laws of Mississippi, 1865, p. 83; Laws of Texas, 1866, p. 59; Laws of Virginia, 1865–66, pp. 89–90: Laws of South Carolina, 1865, p. 299.

[7]Laws of South Carolina, 1865, pp. 278–291.

the regular Superior Court. In the matter of legal penalties, they were usually the same for both races. South Carolina alone inflicted somewhat severer punishments upon negroes in cases of rape, assault and theft.[1]

The movement of negroes from place to place was restricted by only two States, namely, Kentucky and South Carolina. Kentucky, in 1863, refused admission within her borders to any negro who claimed to be free under the Emancipation Proclamation.[2] And South Carolina, in 1865, required every negro migrating into the State to file a bond, within twenty days after his arrival, with two freeholders as sureties, in a penalty of one thousand dollars, conditioned upon his good behavior and for his support in case he should become unable to support himself. If he failed or refused to file this bond he might be taken to the borders of the State; and if he returned to the State within fifteen days he might be imprisoned for fifteen years.[3]

These, then, were the racial distinctions in Southern law arising more or less directly from the war. It may be well to notice in this connection that not all of these distinctions, arose out of ill-will between the races. Some of them were necessary. For instance, the laws regulating the marital relations of negroes and legitimatizing their children were in no sense discriminatory. Likewise, the laws with regard to apprentices and those requiring contracts to be written and read to the negroes were, on the whole, enacted to protect them. But this cannot be said of those laws which required negroes to have licenses to follow their vocations, to have written

[1]Laws of South Carolina, 1865, pp. 271, *et seq.*
[2]Laws of Kentucky, 1863, p. 366.
[3]Laws of South Carolina, 1865, p. 276.

evidence of their homes and employment, and those prohibiting the renting of land to negroes; nor can it be said of those acts prohibiting negroes having firearms, those restricting their movement, and those prescribing a different court and different punishment. But good or bad, almost all laws which in any way distinguished between the races went almost at a blow when the State governments began to be reconstructed. For instance, at least twenty-five pages of the Laws of South Carolina, 1865-66, were devoted to acts referring almost exclusively to negroes. When the reconstructionists were through with them in 1867, all that was left was the provision against intermarriage of negroes and white persons.

We come now to those laws which separate the races in the home, at school, and in public conveyances—those prohibiting intermarriage, those requiring separate schools and those requiring separate railroad accommodations.

There is hardly one point upon which the Southern States are so unanimous as that there shall be no intermarriage between the races. Their determination is expressed both in their constitutions and in their codes. The prohibition is found in the Constitution of Georgia,[1] 1865; of Tennessee,[2] 1870; of North Carolina,[3] 1875; and of Mississippi,[4] 1890. These States also have statutory provisions prohibiting intermarriage. For instance, Florida[5] has three, and Mississippi,[6] North Carolina,[7] and Ten-

[1]Art. IV, sec. 1.
[2]Art. XI, sec. 14.
[3]Art. XIV, sec. 24.
[4]Art. XIV, sec. 263.
[5]Laws of Florida, 1865, p. 30; 1881, p. 86; 1903, p. 76.
[6]Laws of Mississippi, 1865, p. 82.
[7]Laws of North Carolina, 1871–72, p. 328.

nessee[1] each have one statute to that effect; while Arkansas,[2] Kentucky,[3] Louisiana,[4] South Carolina,[5] and Virginia[6] seem not to have constitutional provisions against intermarriage, but have statutory provisions instead. The penalty for the violation of this prohibition varies from one year's imprisonment or a fine of five hundred dollars in South Carolina[7] to life imprisonment in Mississippi.[8] North Carolina alone has prohibited the intermarriage of negroes and Indians, and the prohibition applies only to Croatans.[9] Why this distinction? I believe that it is no trick of fancy to say that this State prohibited the intermarriage of Croatan Indians and negroes because she feared lest some of the blood of Virginia Dare's stock might flow through mulattoes' veins, and that the "milk white doe of Carolina's coast" might become spotted.

An equally universal principle in the Southern States is that the races must be educated in separate schools. This is provided for both in the constitutions and statutes. Two of the reconstruction constitutions, however (those of Louisiana,[10] 1868, and South Carolina,[11] 1868), provided that all public schools supported by the State should be open to all, without distinctions as to race or color. The Constitutions of Alabama,[12] 1867 and 1901; of Florida,[13]

[1]Laws of Tennessee, 1869–70, pp. 67-70.
[2]Laws of Arkansas, 1866–67, p. 99.
[3]Laws of Kentucky, 1865–66, p. 37.
[4]Laws of Louisiana, 1894, p. 63.
[5]Laws of South Carolina, 1865, p. 291, and 1879, p. 3.
[6]Laws of Virginia, 1877–78, pp. 302–303.
[7]Laws of South Carolina, 1879, p. 3.
[8]Laws of Mississippi, 1865, p. 82.
[9]Laws of North Carolina, 1887, p. 494.
[10]Title VII, Art. 135.
[11]Art. IX, sec. 10.
[12]Art. XII, sec. 1, and Art. XIV, sec. 256.
[13]Art. XII. sec. 12.

1885; of Georgia,[1] 1868; of Louisiana,[2] 1898; of Mississippi,[3] 1890; of Missouri,[4] 1865 and 1875; of North Carolina,[5] 1875; of South Carolina,[6] 1895; of Tennessee,[7] 1870; of Texas[8] and of Virginia,[9] 1902, all require separate schools for the white and colored children. And nearly every one of these constitutional provisions has been reënforced by statutes to the same effect.[10] Louisiana seems to have had the most trouble in establishing separate public schools. In 1875, we find the law prohibiting any separation of the races in the A. and M. College of Louisiana.[11] It is not until 1880 that we have the first separate schools for negroes sanctioned by law.[12] It must be remembered that the reconstruction government lasted longer in this than in most of the other States.

The States have been somewhat chary of separating the races, by legal enactment, in private schools and colleges not supported by the State. Nevertheless, three have now taken the step. In 1895, Florida made it unlawful for any person or body of persons to teach colored and white children in the same class or building in any school,

[1]Sec. 187.
[2]Art. 248.
[3]Art. VIII, sec. 207.
[4]Art. IX, sec. 3, and Art. XI, sec. 3.
[5]Art. IX, sec. 2.
[6]Art. XI, sec. 7.
[7]Art. XI, sec. 12.
[8]Art. VII, sec. 7.
[9]Art. IX, sec. 140.
[10]Laws of Alabama, 1884–85, p. 349; Laws of Arkansas, 1886–87, p. 100; 1873, p. 423; Laws of Florida, 1895, pp. 96–97; Laws of Louisiana, 1880, pp. 110–111; Laws of Mississippi, 1878, p. 103; Laws of Missouri, 1864, p. 126 and 1889, p. 226; Laws of Tennessee, 1865–66, p. 65, 1873, p. 46, and 1901, p. 9; Laws of Texas, 1876, p. 201 and 1884, p. 40.
[11]Laws of Louisiana, 1875, pp. 50–52.
[12]Laws of Louisiana, 1880, p. 110.

public or private, of any grade.[1] In 1901, Tennessee followed with a similar law.[2] And in 1904, Kentucky also prohibited the teaching together of white and colored children even in private schools and colleges.[3] However, she allows a private school to have a branch for pupils of the other race, provided it is not less than twenty-five miles distant. Out of the Kentucky law grew the Berea College controversy of last year.

There has been surprisingly little separate taxation of the polls and property of negroes for the support of their schools, the school fund usually being divided pro rata. Texas[4] did, in her constitution of 1866, provide that all the proceeds of a tax levied upon negroes should go to the support of their schools. Kentucky is honey-combed with the principle of separate taxation. In 1865-66, she provided that all taxes arising from the property and polls of negroes should go to the support of their schools and paupers.[5] Then she adopted the principle of local separate taxation, by which the negroes were taxed for the support of the schools in their communities.[6] In 1873-74, Kentucky required the school fund for colored schools to come entirely from the taxation of colored people.[7] And local separate taxation lived on[8] until 1904, when the State[9] provided for a system of graded schools in cities of the fourth class, which are to be kept up partly by special taxes;

[1]Laws of Florida, 1895, pp. 96–97.

[2]Laws of Tennessee, 1901, p. 9.

[3]Laws of Kentucky, 1904, pp. 181–182.

[4]Art. X, sec. 10.

[5]Laws of Kentucky, 1865–66, p. 51.

[6]Laws of Kentucky, 1873, pp. 509, 238, 193–194, 554–555.

[7]Laws of Kentucky, 1873–74, pp. 63–66.

[8]Laws of Kentucky, 1879–80, I, pp. 257–258; 1885–86, pp. 877–891; 1887–88, I, pp 192 and 203, II, p. 474.

[9]Laws of Kentucky, 1904, pp. 129–131.

but "no tax raised from the property or poll of any white persons or corporation in said city shall be used for the said graded free colored common schools, nor shall any tax raised from the property or poll of any colored person be used for the support of any said graded free white common schools of said city."

Perhaps the most interesting group of racial distinctions are those known as the "Jim Crow Laws." Of course, this is not their official title, but it is an inseparable nickname. The principle of separation of the races on railroads had its prototype as early as 1865. In that year, both Florida[1] and Mississippi[2] made it unlawful for negroes to intrude into any railroad car set apart for the use of white persons. The next year, 1866, Texas required all passenger trains to have a car for the "special accommodation of freedmen."[3] But in the seventies, during the reconstruction régime, two of the States (Texas[4] and Louisiana[5]) made it unlawful to make any distinctions in public conveyances on account of race or color.

The modern "Jim Crow Laws" may be said to have been begun by Tennessee in 1881.[6] That State stood alone until 1887, when, during the next four or five years, there came a veritable shower of "Jim Crow Laws," consisting of those of Florida,[7] Mississippi,[8] Texas,[9] Louisiana, Alabama,[10] Kentucky,[11] and Arkansas.[12] Then

[1]Laws of Florida, 1865, p. 25.
[2]Laws of Mississippi, 1865, pp. 231–232.
[3]Laws of Texas, 1866, p. 97.
[4]Laws of Texas, 1871, 2d sess., p. 16
[5]Laws of Louisiana, 1873, pp. 756–757.
[6]Laws of Tennessee, 1881, pp. 211–212 and 1885, pp. 124–125.
[7]Laws of Florida, 1887, p. 116.
[8]Laws of Mississippi, 1888, p. 48.
[9]Laws of Texas, 1889, pp. 132–133 and 1891, p. 220.
[10]Laws of Alabama, 1891, p. 412.
[11]Laws of Kentucky, 1891, pp. 63–64.
[12]Laws of Arkansas, 1891, pp. 15–17 and 1893, pp. 200–201.

came a lull until 1898-99, when the other States followed. They were South Carolina,[1] North Carolina,[2] Virginia,[3] and Maryland.[4] So that, at present, Missouri is the only Southern State which has not separated the races in public conveyances. Virginia, however, repealed her "Jim Crow Law" on March 15, 1904.

These laws are practically the same in all of the States. They require that all railroads carrying passengers for hire in the State shall furnish separate accommodations for colored and white passengers, that separate accommodations mean either separate coaches or compartments of the same coach separated by substantial partitions, that these coaches or compartments shall be equal in comfort and convenience, that colored passengers shall not ride in coaches or compartments set apart for white passengers, and vice versa. These provisions do not apply to trains doing interstate business, for that would interfere with the power of Congress to regulate commerce. Therefore, Georgia is the only State to separate the white and colored passengers on sleepers.[5] Neither do the provisions apply to nurses in the employ of members of the other race, nor to officers in charge of prisoners or lunatics, nor to such prisoners and lunatics, nor to railroad employees. They do not apply to narrow-gauge roads, nor to freight trains hauling passengers in caboose cars.

A separation of the races is required on steamboats in North Carolina,[6] South Carolina,[7] and Virginia.[8] These

[1]Laws of South Carolina, 1898, pp. 777–778 and 1903, p. 84 and 1904, pp. 438–439.

[2]Laws of North Carolina, 1899, pp. 539–540.

[3]Laws of Virginia, 1899–1900, pp. 236–237 and 1901, pp. 183–184.

[4]Laws of Maryland, 1904, pp. 187–188.

[5]Laws of Georgia, 1899, pp. 66–67.

[6]Laws of North Carolina, 1899, pp. 539–540.

[7]Laws of South Carolina, 1904, pp. 438–439.

[8]Laws of Virginia, 1889–1900, pp. 340–341 and 1901, pp. 329–330.

provisions, of course, can apply only to those steamboats plying in waters wholly within the jurisdiction of the respective States.

Only three States—Arkansas,[1] Mississippi,[2] and Louisiana[3]—require separate waiting rooms at railroad depots. But the railroads, of their own will and accord it seems, have provided these in a number of the States.

Street cars have not been generally included in these "Jim Crow Laws." However, Louisiana took the initial step in 1902, and passed a general law requiring a separation of the races on street cars. Tennessee followed the next year with a law requiring separate street car accommodations in counties with a population of over a hundred and fifty thousand.[4] This, I think, applied only to Memphis. This year, she made the law general.[5] South Carolina[6] requires separate accommodations on all electric railways operated outside the corporate limits of towns and cities. Virginia is the only State to undertake local legislation on this subject.[7] She, in 1900, required a separation of the white and colored passengers on street cars operating between Richmond and Seven Pines, and between the city of Alexandria, and points in the counties of Fairfax and Alexandria.

Still another set of racial distinctions is those which require the separation of colored and white paupers, lunatics, convicts, and other State dependents. They prohibit the chaining together of white and colored convicts, also their sleeping together; though there is no distinction

[1]Laws of Arkansas, 1893, p. 200.
[2]Laws of Mississippi, 1888, p. 45.
[3]Laws of Louisiana, 1894, pp. 133–134.
[4]Laws of Louisiana, 1902, p. 89.
[5]Laws of Tennessee, 1903, p. 75 and 1905, pp. 321–322.
[6]Laws of South Carolina, 1905, p. 954.
[7]Laws of Virginia, 1901, pp. 212–213 and 639–640.

as to the nature of their work. This separation of the State dependents is accomplished in most of the States not so much by general laws to that effect as by providing separate asylums, and so forth, for the races. And when the State makes provision for a colored asylum or poor-house, we may safely infer that no colored lunatic or pauper is allowed in an asylum or poor-house for white patients.

The most recent racial distinction is that of Georgia, in August of this year, by which all the colored troops of that State are permanently retired from the military service of the State.[1]

Such are the racial distinctions in Southern law, so far as the letter of the law is concerned. There are other laws which do really distinguish between the races, but they are so worded that they cannot properly be included in this discussion. There are still others which, though general in terms, apply particularly to negroes, not because of their race or color but because of other, it seems permanent, characteristics of theirs. For instance, the present vagrancy laws in most of the Southern States were aimed directly at the negroes because of their indolence and thriftlessness. There are laws in nearly all of the Southern States which grow cotton, prohibiting the sale of cotton in less quantities than a bale between the hours of sunset and sunrise. Every one who has had experience on a cotton farm knows that the aim of this legislation is to meet the habit of the negroes to hide cotton in the fence-corners and bushes during the day to bag off to some neighboring store under the cover of night.

[1]Laws of Alabama, 1875, p. 285 and 1884–85, p. 192; Laws of Arkansas, 1903, p. 161; Laws of Georgia, 1890–91, p. 213.

It is significant that Georgia[1] and Kentucky[2] have made chicken-stealing a felony.

The racial distinctions are before us. We have seen that those distinctions which existed during the first years after emancipation, those regulating the relations of the master and his colored apprentice, of the employer and his colored laborer, those which restricted the movement of negroes, those which restricted their right to testify and to sit on juries, those which prescribed a different court and different punishment for negroes—all have been repealed or become inoperative. On the other hand, those laws which prohibit intermarriage, those which separate the races in the schools, those which require separate coaches for colored and white passengers have become more definite and more nearly universal throughout the South. Political and judicial distinctions have been disappearing; social distinctions have been and are being more clearly defined. The legislators have been vigilant in their efforts to prevent any sort of social associations between the races. This principle reaches from the pauper and convict to the college and university student and professor. Impelled by a fear that some legislature might try to legislate social equality between the races, Georgia[3] has in the Bill of Rights of two of her constitutions (that of 1868 and that of 1877), the somewhat unique provision: "The social status of the citizen shall never be the subject of legislation."

What relation does the foregoing bear to the discussion of suffrage in the South? Simply this: the suffrage clauses have lent themselves to racial distinctions, especially by

[1]Laws of Georgia, 1905, p. 166.
[2]Laws of Kentucky, 1904, p. 83.
[3]1868, Art. I, sec. 11; 1877, Art. II, sec. 1.

their "grandfather" and "understanding" provisions. The former are temporary provisions, the last, that of North Carolina, expiring in 1908. The "understanding" clause is permanent only in Mississippi. These are political distinctions. The sign of the times, judged in the light of the last forty years, is that all political distinctions between the races will disappear. Therefore, suffrage discriminations will depart from the stage with the rest of their companions. But the educational and property tests will remain, because they are not racial distinctions. We may expect that the negro with intelligence enough to read the constitution of his State, with thrift enough to acquire a fair amount of property, and with State pride enough to pay his taxes will be allowed to vote as readily as will the white man with similar qualifications. But in matters social we may expect the races to drift further and further apart. Social association is based upon something deeper and broader than statutory enactments. All that the written law need do, all that it has tried to do, is to separate the races wherever and whenever there is danger of friction and thus conduce to harmony between the black people and the white people of the South.